

in writing where required by subpart A of this part.

**§ 1726.202 Informal competitive bidding.**

Informal competitive bidding may be used for equipment purchases and generation construction. The borrower must use the following procedure for informal competitive bidding:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed contract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure competition and that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct clarifying discussions with the bidders. If such clarifying discussions are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price for a responsive bid.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when deter-

mining whether to include a particular bidder on the qualified bidders list.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in private. The contracting committee will open each bona fide bid which has been received prior to the deadline, and review it for any irregularities, errors, or exceptions. It must be verified that any addendum to the specification has been acknowledged by each bidder. The adequacy of bid bonds or certified checks must also be verified.

(g) *Conditions affecting acceptability of bids.* The borrower must take the following specified action if any of the following exist:

(1) *Fewer than three bona fide bids received.* If fewer than three bona fide bids are received for the contract project, the borrower must determine that all reasonable measures have been taken to assure competition prior to awarding the contract. This determination must be documented and such documentation submitted to RUS where required by subpart A of this part. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both and invite new bids.

(2) *Significant error or ambiguity in the specification.* If a significant error or ambiguity in the specification is found which could result in the bidders having varying interpretations of the requirements of the bid, the borrower must either issue an addendum to each prospective bidder correcting the error or ambiguity before bids are received, or reject all bids and correct the specification. If a significant error or ambiguity in the specification is discovered after the bids are opened, the borrower must reject all bids, correct the specification and invite new bids.

(h) *Clarification of proposals.* The contracting committee may elect not to

hold any clarifying discussions and recommend awarding the contract to the low responsive bidder. Otherwise, the contracting committee must give at least each of the three apparent lowest evaluated bidders an equal opportunity to participate in discussions for the purpose of resolving questions regarding the specification and contract terms and to arrive at a final price. Neither prices of other bids nor relative ranking of any bidder are to be revealed under any circumstances. Such discussions may be held by telephone or similar means provided at least each of the three apparent lowest evaluated bidders have an equal opportunity to participate. Upon completion of the clarifying discussions, the contracting committee will determine the lowest evaluated responsive bid. If no bids are responsive after the contracting committee has completed clarifying discussions, no contract award can be made under the informal bidding procedure.

(i) *Award of the contract.* Upon completion of the bid evaluations, the contracting committee will promptly report all findings and recommendations to the borrower's board of directors. The board will either:

(1) Resolve to award the contract to the lowest evaluated responsive bidder; or

(2) Reject all bids.

(j) *Certifications by the contracting committee.* The chairperson of the contracting committee shall certify as follows: "The procedures for informal competitive bidding as described in 7 CFR 1726.202 were followed in awarding this contract." The certification executed by the chairperson of the contracting committee shall be submitted to RUS in writing where required by subpart A of this part.

#### § 1726.203 Multiparty negotiation.

Multiparty negotiation may only be used where permitted under subpart F of this part or where prior RUS approval has been obtained. The borrower must use the following procedure for multiparty negotiation:

(a) *Selection of qualified bidders.* The borrower (acting through its engineer, if applicable) will compile a list of qualified bidders for each proposed con-

tract. The borrower will send invitations to bid only to persons or organizations on its qualified bidder list for the specific project (see § 1726.23).

(b) *Invitations to bid.* The borrower (acting through its engineer, if applicable) is responsible for sending out invitations to prospective bidders, informing them of scheduled bid openings and any other action necessary to procure full, free and competitive bidding. In any event, however, sufficient invitations need to be sent out to assure competition and so that at least three bids will be received. Subject to the criteria in the preceding sentence, the determination of how many and which bidders will be permitted to bid will be the responsibility of the borrower.

(c) *Notice and instructions to bidders.* The borrower must indicate in the "Notice and Instructions to Bidders" section of the bid documents that bids will be opened privately. The borrower may elect to conduct negotiations with the bidders. If such negotiations are held, at least the three apparent low evaluated bidders must be given an equal opportunity to resolve any questions related to the substance of the bidder's proposal and to arrive at a final price.

(d) *Evaluation basis.* Any factors, other than lowest dollar amount of the bid, which are to be considered in evaluating the proposals of qualified bidders (e.g., power consumption, losses, etc.) must be stated in the "Notice and Instructions to Bidders." The borrower will not evaluate a bidder's performance record, safety record, and similar factors when evaluating a bid from a qualified and invited bidder. Such factors are to be considered when determining whether to include a particular bidder on the qualified bidders list.

(e) *Handling of bids received.* The borrower or the engineer, as applicable, will indicate, in writing, the date and time of receipt by the borrower or the engineer on the outside envelope of each bid and all letters and other transmittals amending or modifying the bids. Any bid received at the designated location after the time specified must be returned to the bidder unopened.

(f) *Bid opening.* The contracting committee will conduct the bid opening in